### 1 UNITED STATES DISTRICT COURT FOR THE 2 EASTERN DISTRICT OF PENNSYLVANIA 3 THOMAS PENLAND, 4 **Plaintiff** 5 Case No.: v. 6 NCO FINANCIAL SYSTEMS, INC., **COMPLAINT AND DEMAND FOR** 7 **JURY TRIAL** Defendant 8 (Unlawful Debt Collection Practices) 9 **COMPLAINT** 10 THOMAS PENLAND ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C., 11 12 alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"): 13 14 INTRODUCTION 15 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 16 U.S.C. § 1692 et seq. ("FDCPA"). 17 18 **JURISDICTION AND VENUE** 19 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states 20 that such actions may be brought and heard before "any appropriate United States district court 21 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original 22 jurisdiction of all civil actions arising under the laws of the United States. 23 3. Defendant conducts business and has an office in the Commonwealth of 24 25 Pennsylvania and therefore, personal jurisdiction is established. 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1). - 1 -

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5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

#### **PARTIES**

- 6. Plaintiff is a natural person residing in Ashville, North Carolina, 28806.
- 7. Plaintiff is a person granted a cause of action under the FDCPA. <u>See</u> 15 U.S.C. §1692k(a), and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec 22, 2000).
- 8. Defendant is a national debt collection company with corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.
- 9. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.
- 10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

#### PRELIMINARY STATEMENT

- 11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties.

  See 15 U.S.C. § 1692 et seq. The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.
- 12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The

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substantive heart of the FDCPA lies in three broad prohibitions. First, a "debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." 15 U.S.C. § 1692d. Second, a "debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. And third, a "debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f, The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in connection with the collection of a debt.

- In enacting the FDCPA, the United States Congress found that "[t]here is 13. abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors," which "contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. § 1692a. Congress additionally found existing laws and procedures for redressing debt collection injuries to be inadequate to protect consumers. 15 U.S.C. § 1692b.
- 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt collectors. The express purposes of the FDCPA are to "eliminate abusive debt collection practices by debt collectors, to insure that debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692e.

#### **FACTUAL ALLEGATIONS**

15. Defendant and others it retained placed harassing and abusive collection calls to

Plaintiff seeking and demanding payment for an alleged consumer debt of another person.

- 16. Upon information and belief, the alleged debt Defendant was seeking to collect arose out of transactions, which were primarily for personal, family, or household purposes.
- 17. Defendant and its employees placed repeated telephone calls to Plaintiff's home telephone in or around April 2011.
  - 18. Defendant identified the debtor as "Stephanie Penland," Plaintiff's adult daughter.
- 19. Plaintiff asked Defendant's representative why he was being contacted in connection with his daughter's alleged debt as his daughter did not reside with him.
- 20. Defendant's representative falsely stated that Plaintiff's daughter had provided his name as a reference.
- 21. Upon information and belief, Plaintiff's daughter never provided Plaintiff as a reference.
- 22. Plaintiff or ally instructed Defendant's representative to cease and desist from any further telephone calls.
- 23. Despite Plaintiff's instructions not to contact him, Defendant and others it retained continued to contact Plaintiff in its attempts to collect a debt on at least two additional occasions.
- 24. The repetitive calls to Plaintiff were disturbing, harassing, and an invasion of privacy.
  - 25. Defendant failed to update its records to avoid further harassment of Plaintiff.

#### CONSTRUCTION OF APPLICABLE LAW

26. The FDCPA is a strict liability statute. <u>Taylor v. Perrin, Landry, deLaunay & Durand</u>, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer

need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

- 27. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 et seq., is a remedial statute, it should be construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).
- 28. The FDCPA is to be interpreted in accordance with the "least sophisticated" consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for the public that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

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**COUNT I** 

#### DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

- 29. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:
  - a. Defendant violated of the FDCPA generally;
  - b. Defendant violated § 1692b(2) of the FDCPA by informing Plaintiff that another person owed a debt, specifically "Stephanie Penland";
  - c. Defendant violated § 1692b(3) of the FDCPA by calling Plaintiff more than once in connection for the collection of a debt for "Stephanie Penland";
  - d. Defendant violated § 1692c(b) of the FDCPA by communicating with Plaintiff about a debt allegedly owed by "Stephanie Penland";
  - e. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
  - f. Defendant violated § 1692d(5) of the FDCPA by causing Plaintiff's telephone to ring repeatedly or continuously with in the intent to annoy, harass or abuse Plaintiff;
  - g. Defendant violated § 1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt; and
  - h. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

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WHEREFORE, Plaintiff, THOMAS PENLAND, respectfully pray for a judgment as follows:

- a. All actual compensatory damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
- d. Any other relief deemed appropriate by this Honorable Court.

## **DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, THOMAS PENLAND, demands a jury trial in this case.

DATED: 07/07/11

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RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

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